FAIR POLITICAL PRACTICES COMMISSION
Memorandum

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin, and Remy

From: William J. Lenkeit, Senior Commission Counsel, Legal Division
John W. Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: Adoption of Amendments to the "Public Generally" Exception to the Conflict-of-Interest Provisions — Regulation 18707.1.

Date: November 22, 2006

I. EXECUTIVE SUMMARY

This regulatory project continues to examine Commission rules for applying the "public generally" exception of the conflict-of-interest provisions of the Political Reform Act (the "Act") [1] to a public official's interest in real property.

Under the "public generally" exception provided in regulation 18707.1, the material financial effect of a governmental decision on a public official's real property economic interest is indistinguishable from its effect on the public generally if the decision affects a "significant segment" of the public in "substantially the same manner" as it will affect the public official's economic interest. For real property economic interests, "significant segment" is defined as: (1) "ten percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents;" or (2) "5,000 property owners or homeowners in the jurisdiction of the official's agency."

The amendments previously presented for adoption at the November 2006 Commission meeting would: (1) change the method used to identify the "significant segment" of residential property owners affected by the decision to include owners of residential property who rent their property to others; and (2) provide a list of factors to be considered in determining when real property is affected in "substantially the same manner." These amendments are again presented for adoption along with a newly proposed amendment that would, under certain circumstances, allow a count of residential *properties* to determine the significant segment of residential property *owners* affected in substantially the same manner in applying the public generally exception.

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[1] Government Code sections 81000–91014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations. All statutory references are to the Government Code unless otherwise indicated.

II. BACKGROUND

As part of this project, at the November Commission meeting, the Commission adopted staff's proposed restoration of a small jurisdictions' public generally exception (regulation 18707.10). Additionally, the Commission directed staff to return at the December meeting for adoption of the approved language encompassing the amendment of "homeowners" to "residential property owners" in the "significant segment" test and providing factors to be considered in determining when properties are affected by a decision in "substantially the same manner." These proposals were approved at the November Commission meeting.

However, in examining the proposed amendments, a new issue was raised by Michael Martello from the California League of Cities in a public comment letter (attached as exhibit 1) and further public comment offered at the meeting. This issue concerned the difficulty public officials had in determining the appropriate number of *similarly affected* residential property owners. Although a governmental decision may have a similar financial effect on various properties, the comparative financial effect on the owners of those properties would differ depending on the number of owners who own each property. In other words, if the financial effect on each of two properties is exactly the same, and one property is owned by one individual and the other by a trust consisting of five individuals, the financial effect on the one individual would be five times as great as that on each of the individual members of the trust.

Because the determination of the financial effect on individuals can be laborious, time consuming, and an often difficult process, Mr. Martello requested that the Commission consider allowing a count of properties, rather than individual owners, in determining the significant segment. As a result, the Commission requested staff to return at the December meeting with proposed language to address this problem. **Decision Point 1** below is the result of that request.

III. DISCUSSION OF AFFECTED REGULATION

The language presented in Decision Point 1 would amend regulation 18707.1(b)(1)(B) by adding subsection (iii) to allow residential properties to be counted toward the threshold requirements of the significant segment test:

> "(iii) While the public official must identify ten percent or more of residential property owners or 5,000 residential property owners as provided above, and not residential properties, for purposes of this subdivision the official may choose to count each residential property affected as being owned by one property owner if the official only counts himself or herself as the sole owner of the public official's residential property regardless of his or her actual ownership interest."

Under this proposed language, a public official, regardless of the official's actual ownership interest in his or her residential property, would have the option to count each residential property as being owned by one individual.

This procedure would eliminate the need to determine the number of owners and percentage of ownership interest in residential properties under the first prong of the public generally exception, in limited circumstances. Under the proposed changes, a public official could more easily compare his or her residential property directly with other residential properties, and if enough residential properties were financial effected in substantially the same manner as the official's property, the public generally exception would apply.

Example: Councilmember Smith owns her home with her husband. The home is valued at $500,000. The governmental decision will have a reasonably foreseeable financial effect on an area consisting of 1,000 residential properties, in a jurisdiction with 2,500 residential properties. The planning staff informs Councilmember Smith that the decision will increase the value of these properties by five percent. The city attorney advises the councilmember that the 1,000 properties clearly constitute a "significant segment" but that since financial effect is measured in dollar amounts, not percentages, it is unlikely that the "substantially similar manner" part of the exception is met because the value of the 1,000 residential properties ranges from $500,000 to $1,000,000.

Councilmember Smith, who is a data wizard, runs a DataQuick search and finds that there are 525 residential properties valued at $500,000 and asks the city attorney if that helps. The city attorney informs the councilmember that these properties also constitute a "significant segment" in the jurisdiction because they comprise more than 10% of the properties in the jurisdiction. Therefore, provided that no factors apply indicating that her residential property is not affected in a similar manner, Councilmember Smith meets the public generally exception based on a sufficient number of similarly valued properties, without the need to determine the ownership interests in those properties. This is because a five percent increase on all $500,000 properties in the significant segment will translate to a dollar increase within the segment of approximately $25,000.

Staff Recommendation: Staff recommends that the Commission adopt the regulation with proposed changes, including the language at **Decision Point 1**. Staff believes that the method provided would simplify the process.

Attachments
Letter from Michael D. Martello
Proposed amendments to regulation 18707.1